

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MARSHALL LEE LUCAS JR. §
v. § CIVIL ACTION NO. 6:11cv394
DIRECTOR, TDCJ §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Marshall Lucas, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of the computation of his sentence. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Lucas asserts that he was released on parole in error in August of 2003, and that as a result, he is entitled to credit for the time spent on parole until that status was revoked, in March of 2005, minus 90 days for a stay during 2004 in an intermediate sanction facility. With this time credited, Lucas says, his sentence should have expired in September of 2010.

The Respondent was ordered to answer and has done so, arguing that the statute of limitations has expired on Lucas' claims. Lucas did not file a response to the answer.

After review of the pleadings and the state court records, the Magistrate Judge issued a Report on November 30, 2011, recommending that the petition be dismissed based upon the expiration of the statute of limitations. A copy of this Report was sent to Lucas at his last known address, but has been returned as undeliverable; TDCJ records show that Lucas has been released from confinement due to the expiration of his sentence. Accordingly, he is barred from *de novo*

review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice as barred by the statute of limitations. It is further

ORDERED that the Petitioner Marshall Lucas is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are hereby DENIED.

It is SO ORDERED.

SIGNED this 16th day of December, 2011.



MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE